

In June of this year, President Obama directed the Director of National Intelligence to declassify and make public as much information as possible about certain sensitive programs while being mindful of the need to protect sensitive classified intelligence activities and national security.

Consistent with this directive, the Director of National Intelligence has today authorized the declassification and public release of a number of documents pertaining to the Government's collection under Section 702 of the Foreign Intelligence Surveillance Act (FISA). These documents were properly classified, and their declassification is not done lightly. The Director of National Intelligence has determined, however, that the harm to national security in these circumstances is outweighed by the public interest. The documents released today are a testament to the government's strong commitment to detecting, correcting, and reporting mistakes, and to continually improving its oversight and compliance processes.

These releases also reflect the Executive Branch's continued commitment to making information about the Government's implementation of Section 702 publicly available when appropriate and consistent with ensuring the protection of the national security of the United States. Because these documents include discussion of matters that remain appropriately classified so as to protect national security, it was necessary to redact some information from them. These documents are being made immediately available at the website of the Office of the Director of National Intelligence (www.dni.gov), and also will be made available on a new public website dedicated to fostering greater public visibility into the intelligence activities of the Government (IContheRecord.tumblr.com).

- Foreign Intelligence Surveillance Court Opinions: Today we are releasing two FISA Court opinions, and a portion of a third, making redactions only when necessary to protect classified intelligence activities. These opinions provide additional context to statements declassified by the Government and made by Senator Wyden in July 2012 that the Court had concluded on one occasion that NSA's implementation of Section 702 was inconsistent with FISA and the Fourth Amendment.

In the first of these opinions, dated October 3, 2011, the Court found that, with respect to the vast majority of the collection under Section 702, the Government's specific privacy protection procedures (targeting and minimization procedures) were consistent with the requirements of FISA and the Fourth Amendment. However, the Court also determined that, for highly technical reasons concerning the manner in which the collection occurred, the minimization procedures proposed by the Government as applied to a discrete subset of NSA's upstream collection of electronic communications did not satisfy certain statutory requirements in FISA, and that the targeting and minimization procedures as applied to the same subset of communications did not satisfy Fourth Amendment requirements.

In response, and as discussed in the other opinions being released, the Government developed, and the Court approved, more stringent minimization procedures containing additional protections for U.S. person information collected as part of this discrete subset. Moreover, the Government took the additional step of deleting all such upstream

communications that were acquired prior to the implementation of the revised procedures approved by the Court.

In the end, the Government satisfied the concerns raised by the Court, and the Court found that the revised procedures satisfied the law and the Constitution. These documents reflect the Government's serious commitment to getting it right and the Court's careful and searching review of matters within its jurisdiction.

The opinions that we are releasing today, along with the underlying pleadings and documents, were provided to the Intelligence and Judiciary Committees of both Houses of Congress in October 2011, December 2011, and September 2012. In addition, the opinions, as well as the underlying pleadings presented to the FISC in connection with this matter, were produced as part of the Attorney General's semiannual report provided to the committees in March 2012 and March 2013, pursuant to 50 U.S.C. § 1881(f).

- Minimization Procedures: We are releasing the 2011 NSA minimization procedures applicable to collection under Section 702, enhancing the protections for U.S. person communications, which the Court approved in response to the compliance matter discussed above.
- Congressional 702 White Paper: We are releasing several other documents to provide additional insight into the Congressional oversight of Section 702 generally and this compliance incident specifically. First, we are releasing significant portions of a White Paper that was prepared by the Government and provided to the Senate and House Intelligence Committees in connection with congressional debate on whether to reauthorize Section 702, with the request that it be made available to any member of Congress who wanted to review it. Second, we are releasing portions of statements prepared for classified congressional hearings that discuss this compliance incident specifically.
- Compliance and Oversight: The documents released today reflect NSA's active internal compliance program, the robust oversight conducted by Office of the Director of National Intelligence and the Department of Justice, and the independent review of the FISA Court. As noted above, the compliance matter discussed in the FISA Court opinions was discovered by the Government through the exercise of its own compliance and oversight efforts, and was duly reported to the Court and to Congress. To provide additional context regarding these compliance efforts, the Government is also releasing today the most recent Semi-Annual Assessment prepared by Department of Justice and Office of the Director of National Intelligence reviewing the Section 702 process pursuant to 50 U.S.C. § 1881(l)(1). This assessment, which is provided to Congress and the FISA Court, reports on the Government's compliance with its targeting and minimization procedures.

As seen in the assessment, the Government undertakes extraordinary measures to faithfully identify, record, and correct its mistakes – and to put systems and processes in

place that seek to prevent mistakes from occurring in the first place. In large-scale enterprises as technologically sophisticated and operationally complex as the 702 program, mistakes and errors can and will happen. While many of the errors described in the Semi-Annual assessment are relatively minor and do not implicate substantial privacy interests, the Government has on occasion identified more serious compliance problems in the implementation of collection under Section 702 (often caused by technical and implementation challenges), which have been promptly reported to the FISA Court and to Congress. The opinions released today highlight one such incident that was discovered and reported to the FISA Court and Congress in 2011.

In addition, the October 3, 2011 opinion also references two other significant compliance issues that the Government identified on its own in 2009. These issues were likewise promptly reported to the FISA Court and to Congress and have since been resolved. One of these involved the discovery that the NSA's bulk collection of telephony metadata had not been implemented as intended. The second issue related to a now-discontinued bulk Internet metadata collection program. In both cases, these incidents were due to a variety of factors including gaps in technical understanding among various NSA components about how certain aspects of the complex architecture supporting the programs functioned. These gaps led to unintended misrepresentations in the way the collections were described to the FISA Court. The Government continues to review whether any additional information may appropriately be declassified in relation to these incidents.

Upon discovery of these issues in 2009, NSA recognized that its compliance and oversight infrastructure had not kept pace with its operational momentum and the evolving and challenging technological environment in which it functioned. NSA, in close coordination with the Office of the Director of National Intelligence and the Department of Justice, therefore undertook significant steps to address these issues from a structural, managerial, and training perspective. The Director of NSA ordered comprehensive reviews of these collection programs to ensure they were being implemented in accordance with all applicable legal requirements, including special orders and procedures put in place by the FISA Court. Concurrently, NSA created the position of Director of Compliance, whose sole function is to keep NSA's activities consistent with the law, policies, and procedures by strengthening NSA's compliance program across NSA's operational and technical activities. NSA has and continues to enhance training for both operational and technical personnel, added additional technology-based safeguards, implement procedures to ensure accuracy and precision in Court filings, and conduct regular detailed senior leadership reviews of the compliance program. NSA has also enhanced its oversight coordination with the Department of Justice and Office of the Director of National Intelligence.

Since 2009, the Government has continued to increase its focus on compliance and oversight. Today, NSA's compliance program is directly supported by over three hundred personnel, which is a fourfold increase in just four years. This increase was designed to address changes in technology and authorities enacted as part of the FISA Amendments Act to confront involving threats. It is also a reflection of the commitment

on the part of the Intelligence Community and the rest of Government to ensuring that these extraordinary intelligence activities are conducted responsibly and subject to the rule of law.